

**IN THE UNITED STATES DISTRICT COURT  
FOR WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**ISMAEL BOTELLO,**

**Plaintiff,**

**v.**

**SAM’S EAST, INC., SAM’S WEST, INC.,  
and WAL-MART ASSOCIATES, INC.**

**Defendants.**

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**No.: 3:21-CV-00095**

**NOTICE OF REMOVAL**

Defendants Sam’s West, Inc. (“Sam’s West”), Sam’s East, Inc. (“Sam’s East”), and Wal-Mart Associates, Inc. (“Associates”) (collectively “Defendants”) file this Notice of Removal removing Cause No. 2021-DCV-0443 from the County Court at Law Number Six, El Paso County, Texas to this Court pursuant to 28 U.S.C. §§ 1332 and 1441.

**I. PROCEDURAL BACKGROUND**

1. On February 8, 2021, Plaintiff Ismael Botello (“Plaintiff”) filed his “Original Petition” against Defendants in the County Court at Law Number Six, El Paso County, Texas styled *Ismael Botello v. Sam’s East, Inc., Sam’s West, Inc. and Wal-Mart Associates, Inc.*, 2021-DCV-0443. In his Original Petition, Plaintiff alleges a claim for common law negligence.

2. Plaintiff served his Original Petition on Defendants on March 24, 2021, and they filed their Answer on April 19, 2021. This removal is thus timely filed. True and correct copies of all pleadings served on Defendants are attached hereto.

## **II. DIVERSITY JURISDICTION**

### **A. There is Complete Diversity of Citizenship Between Plaintiff and Defendants**

3. The District Courts of the United States have original jurisdiction over this action based on complete diversity between the parties, in that Defendants are now, and at the time the action was filed, diverse in citizenship from Plaintiff. Upon information and belief, Plaintiff is a resident of El Paso County, Texas and a citizen of the State of Texas. *See* Pl.’s Orig. Pet. p. 1, ¶ II. Defendant Sam’s West, Inc. is an Arkansas corporation and has its principal place of business in Arkansas. Defendant Wal-Mart Associates, Inc. is a Delaware corporation and has its principal place of business in Arkansas. Sam’s East, Inc. is an Arkansas corporation and has its principal place of business in Arkansas. Thus, there is complete diversity of citizenship between Plaintiff and Defendants.

### **B. The Amount In Controversy Requirement Is Met**

4. Where it is “facially apparent” that the claims more likely than not exceed \$75,000, exclusive of interest and costs, the amount in controversy requirement of \$75,000 for diversity jurisdiction is met. *Felton v. Greyhound Lines, Inc.*, 324 F.3d 771, 773 (5th Cir. 2003) (quoting *DeAguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993)). In his Original Petition, Plaintiff pleads that he is seeking to recover monetary damages between \$200,000.00 and \$1,000,000.00. *See* Pl.’s Orig. Pet. p. 6, ¶ VIII. Thus, it is apparent from the face of Plaintiff’s Original Petition that the amount-in-controversy in this case exceeds \$75,000.

5. Accordingly, because this civil action is wholly between citizens of different states and because the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, this Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1), and this action is removable pursuant to 28 U.S.C. § 1441.

### **III. PROPER VENUE AND COMPLIANCE WITH REMOVAL PROCEDURE**

6. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

7. Defendants will promptly give Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Defendants will also promptly file a copy of this Notice of Removal with the Clerk of the County Court at Law Number Six, El Paso County, Texas, where the action is currently pending, also pursuant to 28 U.S.C. § 1446(d).

8. True and correct copies of all process, pleadings, and the orders served upon Defendants in the state court action are being filed with this notice as required by 28 U.S.C. § 1446(a) and attached hereto.

9. Pursuant to 28 U.S.C. § 1446(b), this Notice Removal is filed within thirty (30) days after service of the initial pleading setting forth a removable claim.

ACCORDINGLY, Defendants hereby remove Cause No. 2021-DCV-0443 from the County Court at Law Number Six, El Paso County, Texas on this 23rd day of April, 2021.

Respectfully submitted,

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By: /s/ Clara B. Burns  
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Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the attorney for Plaintiff, Oscar Mendez, Jr., Scherr & Legate, PLLC, 109 N. Oregon St., 12th Floor, El Paso, Texas, 79901, on the 23rd day of April, 2021.

- ☐ Regular Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- X Electronic Transmission: [OMendez@ScherrLegate.com](mailto:OMendez@ScherrLegate.com)
- ☐ Facsimile Transmission: (915) 532-1759

/s/ Jose A. Gonzalez  
JOSE A. GONZALEZ